



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 175030

**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review decisions by the Brown County Human Services regarding overpayments of Medical Assistance (MA), a hearing was held on August 24, 2016, by telephone. At the request of the county agency, the record was held open for 10 days for the submission of additional information. At the request of the petitioner, a hearing set for July 21, 2016, was rescheduled.

The issue for determination is whether the county agency has correctly determined that the petitioner was overpaid a total of \$1,042.30 in Medical Assistance.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], Fraud Investigator  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. She was receiving MA benefits in the period of September, 2011, through March, 2013, along with her minor child, [REDACTED], who was born on a unstated in the record, apparently in June or July, 2011.
2. On January 23, 2013, the agency referred the petitioner's case to the Brown County Sheriff's Department for a fraud investigation because an agency income maintenance worker had

performed a background check on the petitioner's boyfriend, [REDACTED], and determined that he was listed as living with her at [REDACTED] in the Wisconsin Department of Transportation records database, the Wisconsin Circuit Court Access Program (CCAP), and the U.S. Postal Service database. See, Exhibit #18.

3. The petitioner filed a combined application (for FS, MA and Wis. Shares benefits) with the county agency in February, 2011, for public assistance stating that she lived at [REDACTED].
4. On April 17, 2011, [REDACTED] received a traffic citation from Officer [REDACTED] of the Ashwaubenon Police Department and he provided [REDACTED] with a residence address of [REDACTED]. See, Exhibit #18, p. 4.
5. On June 13, 2011, [REDACTED] provided the circuit court with an address indicating he resided at [REDACTED] for purposes of the traffic citation, above. See, Exhibit #18.
6. On July 14, 2011, [REDACTED] was adjudicated the father of [REDACTED].
7. On May 11, 2012, the petitioner reported to the county agency that she had changed her address and now lived at [REDACTED]. See, Exhibit #18, p. 4.
8. On June 23, 2012, [REDACTED] provided the circuit court with an address update indicating her resided at [REDACTED]. See, Exhibit #18.
9. On September 17, 2012, [REDACTED] apparently updated his address with the circuit court and provided the [REDACTED]. See, Exhibit #18, p. 3.
10. [REDACTED] apparently informed his probation agent that he was living at [REDACTED] from August 17, 2011 – May 1, 2012; and at [REDACTED] from May 1, 2012 – probation ended on August 9, 2012. See, Exhibit #18, at p. 4.
11. [REDACTED] was listed at the [REDACTED] address with the U.S. Postal Service as of an inquiry on January 13, 2013.
12. Sheriff's Deputy [REDACTED] interviewed the petitioner on March 20, 2013, and the petitioner signed and acknowledged a written statement typed by [REDACTED] after she reviewed it, attesting to it that she signed voluntarily. See, Exhibits #19 & #20.
13. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that she met [REDACTED] in spring 2011. See, Exhibit #19 & #20.
14. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with her "off and on" when she moved into the residence at [REDACTED] Wisconsin in May, 2010. See, Exhibit #19 & #20.
15. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began staying with her at [REDACTED] Wisconsin, and she again became pregnant in September, 2011. See, Exhibit #19 & #20.
16. On a date unknown in this record between September 1, 2011 and May 1, 2012, a child in common with [REDACTED] was born, i.e., their daughter, [REDACTED].

17. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began living with the petitioner consistently at [REDACTED] (when she moved into a new apartment) beginning in May, 2012, i.e., more than before when he had been staying over with her 4 or 5 nights per week, but sometimes disappearing for 2-3 days. See, Exhibit #19. He was reportedly there more consistently because the petitioner had agreed that [REDACTED]'s son [REDACTED] could live with them instead of with his biological mother, and [REDACTED] wanted this arrangement. [REDACTED]'s other and older son was also living there, and that was part of the reason [REDACTED] wanted to live there. See, Exhibits #19 & #20.
18. The petitioner admitted in her written statement to Deputy Sheriff [REDACTED] that [REDACTED] began paying water, electric and cell phone bills at the [REDACTED] apartment in about August, 2012, because she asked him to. This was for because he was living with her at the [REDACTED] address. See, Exhibit #19 & #20.
19. The petitioner reported to the agency in the first quarter of 2013 that [REDACTED] had been living with her since January 1, 2013. See, Exhibit #19 & #20.
20. On March 26, 2013, Sheriff's Deputy [REDACTED] interviewed the boyfriend, [REDACTED], and he signed and acknowledged a written statement typed by [REDACTED] after he reviewed it, attesting to it that he signed voluntarily. See, Exhibit #21.
21. [REDACTED] admitted in his written statement that he was living with the petitioner at the time school ended in early summer, 2012, in DePere, Wisconsin, at the time that [REDACTED] moved in, i.e., late May or early June, 2012. He did not state when he moved in with her for the first time. See, Exhibit #21.
22. At no time in 2012 did the petitioner report that [REDACTED] was living with her and had income. See, Exhibit #22, Case Comments from 2012.
23. [REDACTED] had the earned income described in Exhibit #14, #15 & #16; and none of this income had been reported by the petitioner prior to July 8, 2015, because she had not reported him as a household member prior to the first quarter of 2013.
24. On or about May 4, 2016, the agency issued four Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notices to the petitioner informing her that she had been overpaid \$671.43 in capitation rates for the MA coverage she individually received, plus \$151.87 in MA claims paid in the test period for cares she received, plus \$10 for a BadgerCare Plus premium for [REDACTED] in September, 2012, that she would have had to pay (if [REDACTED] had been properly included in her household), plus \$209 for BadgerCare Plus premiums for [REDACTED] in the period of October, 2012 to March, 2013, that she would have had to pay (if [REDACTED] had been properly included in her household). Therefore, she was determined to have been overpaid a total of \$1,042.30 in MA. [REDACTED] was separately notified that he was jointly liable for the \$219 assessed as overpayments for his daughter [REDACTED]. The agency determined [REDACTED] should have been part of a 3 person household. See, Exhibits #1, #2, & #4. The overpayment was computed as shown in Exhibit #6. And see, the CARES database, Claims for an Individual Screen. And see, Exhibits #5 & #7.
25. The petitioner received all of these four Notices and she appealed to the Division of Hearings & Appeals contesting all of these claims on 15, 2016. See, Fair Hearing Request Form listing all four MA claim numbers.

26. [REDACTED] did not appeal any of these claims or appear as a witness at the petitioner's hearing.

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:...

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

See also the Department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Here, as in the companion FoodShare overpayment case, it is crystal clear that the petitioner's boyfriend, and the biological father of [REDACTED], i.e., [REDACTED], was living in the same household as the petitioner and child from May, 2012, to at least the end of the first quarter of 2013, by the petitioner's own admission in Exhibit #20, as corroborated by [REDACTED]'s similar statement in Exhibit #21. Here, the overpayments all arose between September, 2012 and March, 2013. It is equally evident that [REDACTED] had substantial unreported unearned income and that this affected the other household member's eligibility for BadgerCare Plus.

Nor has the petitioner pointed to any mathematical or computational error in determining the four subsets of overpayments totaling \$1,042.30 in BadgerCare MA overpaid here. I must sustain the four MA overpayments on this record.

### **CONCLUSIONS OF LAW**

The agency correctly seeks recovery of an MA overpayment because petitioner did not report that the father of her child-in-common was living in the household and had earned income, causing the household to receive \$1,042.30 of MA payments that it was not entitled to receive in MA Claims [REDACTED] (\$151.87); [REDACTED] (\$671.43); [REDACTED] (\$10); and [REDACTED] (\$209), i.e. a total of \$1,042.30.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby is, dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

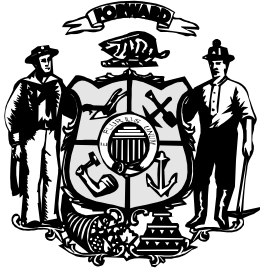
## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of September, 2016

\s \_\_\_\_\_  
Kenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on September 2, 2016.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability